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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,149	02/06/2002	Mark W. Kimberlin	D-2978	1374
33197	7590	01/30/2004	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE, SUITE 300 IRVINE, CA 92618			SALDANO, LISA M	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/072,149

Applicant(s)

KIMBERLIN ET AL.

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by White (5,237,945).

Regarding claims 1, 2, 23 and 24, White discloses a water barrier former from a clay-fiber mat. White discloses that the water barrier fabric may be in flexible form (see abstract). White discloses an embodiment of the inventions in Fig. 6a wherein this embodiment comprises a core layer made of a fiber matrix formed of bentonite clay 20 and randomly oriented fibers 14. White discloses that the fibers may be natural and/or synthetic raw virgin fibers, reprocessed natural and/or synthetic fiber, blends of raw virgin and/or synthetic fiber with reprocessed or recycled natural and/or synthetic fibers. As shown in Fig. 6a, the fiber matrix forms are substantially flat upper surface and a substantially flat lower surface. White discloses a permanent layer of fibers 14 bonded to the substantially flat upper surface of the core layer. White further discloses that the fibers of the invention are formed to permanently interconnect the fibers in a compressed, relatively dense form surrounding the powdered or granular material

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(for example clay). This structure, as broadly claimed by the applicant, functions to resist trapping of sediment within the matting and allows flowing particulates to pass freely over the invention. The invention is for use on surfaces such as soil (see column 1, lines 10-28) to control erosion.

Regarding claim 3, White discloses that the fibers have a density of 0.1 oz.- 50 oz. per square foot prior to application of granular material 20, such as bentonite clay (see column 8, lines 14-22). The range of optimization for the matting's density once it has been completely formed with the fibers and granular material compressed therein can be found through routine experimentation using the apparatus and method disclosed by White.

Regarding claims 4-8, the range of optimization for the matting's value of roughness as defined by Manning's "N," velocity of liquid flow, and durations for liquid flow exposure can be found or obtained through routine experimentation using the apparatus disclosed by White.

Regarding claim 9, White discloses the use of various types of fibers for construction of the invention. White discloses that suitable fibers include fibers made from rayon, polypropylene, polyesters, nylon, acrylic polymers and copolymers, ceramic fiber, fiberglass, propylene-ethylene copolymers, polypropylene-polyamide copolymers, a polyethylene, polyurethane fibers and other natural biodegradable fibers such as straw, hay, cellulosic and the like (see column 17, lines 1-14). White also discloses that the fibers may be coconut fibers and fibers refined from woodchips and the like (see column 20, lines 20-30).

Regarding claims 10, 11, 12 and 25, White discloses that the invention illustrated in Fig.6a may comprise an upper sheet or netting 292 and a lower sheet or netting 294. The netting is clearly disclosed bonded directly to the core layer in Fig.6a.

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*Response to Arguments*

3. The applicant amended claims 1-3 and 25 to include material not previously presented in the claims. For example, the claims now recite that the matting is structured to resist trapping of sediment and to allow flowing particulate matter to pass freely over the matting during a hydraulic event.

4. Applicant's arguments with respect to claims 1-12 and 23-25 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

lms



HEATHER SHACKELFORD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600